



CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0221
HEARING EXAMINER

GARY HAAKENSON
MAYOR

In the Matter of the Application of)	NO. PLN20100042
)	
Deborah and Phillip Moran)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Conditional Use Permit.)	
_____)	

SUMMARY OF DECISION

The request for a conditional use permit to establish an office use in the RM-2.4 zone is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request:

Deborah and Phillip Moran (Applicant) requested a conditional use permit (CUP) to establish an office for a counseling business within the RM-2.4 zone. The subject property is located at 8304 196th Street SW, Edmonds, Washington.

Hearing Date:

The City of Edmonds Hearing Examiner conducted an open record hearing on the request on September 2, 2010.

Testimony:

At the open record hearing, the following individuals presented testimony under oath:

1. Jennifer Machuga, Planner, City of Edmonds
2. Phillip Moran
3. Deborah Moran
4. Alvin Rutledge

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

A. Staff Report dated August 24, 2010, with the following attachments:

1. Land Use Application filed June 7, 2010
2. Vicinity Map
3. Applicant's Criteria Statement
4. Site Plan received June 7, 2010
5. Property Survey

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6. Letter of Incomplete Application
7. Applicant's Response to Request for Additional Information
8. Updated Site Plans received July 30, 2010
9. Landscape Plan received July 30, 2010
10. Notice of Application and Public Hearing
11. Affidavits of Posting, Mailing, and Publication for Notice of Application and Hearing
12. Adjacent Property Owners List
13. U.S. Postal Service Certificates of Mailing
14. Building Division Comments
15. Public Works Department Comments
16. Engineering Division Comments and Memos
17. Snohomish County Fire District No. 1 Comments

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS

1. The Applicant requested a CUP to establish an office for a counseling business within the RM-2.4 zone. The subject property is located at 8304 196th Street SW, Edmonds, Washington. *Exhibit A, Attachments 1, 2, and 3.*
2. The subject property is zoned RM-2.4 (Multiple Residential – minimum lot area 2,400 square feet). One of the purposes of the RM zone is “to provide for those additional uses which complement and are compatible with multiple residential uses.” *ECDC 16.30.000(B); Exhibit A, page 4.* Offices are allowed in the RM zone with approval of a CUP. *ECDC 16.30.010(C).*
3. The Comprehensive Plan designation of the subject property is “Multi-Family – Medium Density.” *Exhibit A, page 3.* The Comprehensive Plan contains the following goals and policies relating to residential areas:

B. Goal. High quality residential development which is appropriate to the diverse lifestyle of Edmonds residents should be maintained and promoted. The options available to the City to influence the quality of housing for all citizens should be approached realistically in balancing economic and aesthetic considerations, in accordance with the following policies:

B.4. Support retention and rehabilitation of older housing within Edmonds whenever it is economically feasible.

B.5. Protect residential areas from incompatible land uses through the careful control of other types of development and expansion based upon the following principles:

- B.5.a. Residential privacy is a fundamental protection to be upheld by local government.
- B.5.b. Traffic not directly accessing residences in a neighborhood must be discouraged.
- B.5.c. Stable property values must not be threatened by view, traffic or land use encroachments.
- B.5.d. Private property must be protected from adverse environmental impacts of development including noise, drainage, traffic, slides, etc.

Exhibit A, page 4.

4. The subject property is an approximate 0.18-acre lot that is developed with a 1,165-square-foot single-family residence. The Applicant proposes to use the existing residence, which was constructed in 1954, for the office use. The Applicant does not propose any exterior modifications to the building, but does propose to develop parking areas and modify the existing landscaping on site. *Exhibit A, page 5; Exhibit A, Attachments 7 and 8.*
5. There is a mixture of residential and commercial land uses in the vicinity of the site, including single-family and multi-family residences, a church/preschool, and professional offices. The properties to the north, east, and west are zoned RM-2.4, the properties to the northeast are zoned RM-3, and the properties to the south are zoned RS-8. *Exhibit A, page 3; Exhibit A, Attachments 2 and 3.*
6. Applicant Deborah Moran proposes to conduct her own counseling business on site, and provide office space for up to two additional business owners. The hours of operation for the counseling use would be from approximately 9:00 a.m. to 7:00 p.m. *Testimony of Ms. Moran.*
7. The site has direct access from 196th Street SW, a principal arterial street. Consequently, traffic generated by the use would not affect neighborhood streets in the vicinity. *Exhibit A, page 4; Exhibit A, Attachment 2; Testimony of Ms. Machuga.*
8. The minimum number of off-street parking stalls for the use (office with on-site customer service), per ECDC 17.50.020(B)(5), is three parking stalls. The parking stalls must be paved and striped. The Applicant proposes to provide the required stalls at the front of the building for use by clients. In addition to the required stalls, the Applicant proposes to install a partially pervious “greencrete” parking area to the rear of the building for use by owners/employees. Access to this area would be from the existing front driveway off 196th Street SW. The use of greencrete, if approved by City engineering staff, would allow the Applicant to provide extra parking without triggering the need for a stormwater permit from the Department of Ecology. Alternatively, the existing driveway might allow for a fourth parking stall at the front of the building as long as adequate space for vehicle maneuvering can be provided. *Testimony of Mr. Moran; Exhibit A, Attachments 8 and 16.*

9. The proposed change in building use requires a City building permit. Traffic impact fees will be assessed at the time of building permit issuance. *Exhibit A, Attachments 14 and 16.*
10. The Applicant has submitted a landscape plan depicting the removal of four trees from the rear yard area and the planting of new trees and shrubs in the front and rear yards. The City will review the landscaping plan for compliance with the applicable design review and landscaping standards prior to building permit issuance. *Exhibit A, page 5; Exhibit A, Attachment 9.*
11. There are no critical areas on site. *Exhibit A, page 3.*
12. The proposal is exempt from review under the State Environmental Policy Act (SEPA). *Exhibit A, page 2.*
13. The Applicant requested that the approval run with the land and be transferable to future owners. *Exhibit A, Attachment 7.*
14. Notice of the open record hearing was mailed to properties within 300 feet of the site on August 18, 2010, and published in *The Herald* and posted on site on August 19, 2010. *Exhibit A, Attachments 10, 11, 12, and 13.*
15. Public comment on the application related to storm drainage and a local crime watch program. *Testimony of Mr. Rutledge.* The storm drainage issue is addressed in Finding 8. The proposed surfacing of the rear yard parking area will allow storm water to infiltrate. If the proposed surfacing is not approved, parking will be limited to ensure that new impervious surfaces do not exceed 2,000 square feet. However, the minimum parking required by code will be provided. *Testimony of Mr. Moran.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide CUP applications pursuant to ECDC 20.01.003 and ECDC 20.05.020.

Criteria for Review:

Pursuant to ECDC 20.05.010, the Hearing Examiner may not approve a CUP unless the following findings can be made:

- A. That the proposed use is consistent with the comprehensive plan;
- B. Zoning Ordinance. That the proposed use, and its location, is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the use is to be located, and that the proposed use will meet all applicable requirements of the zoning ordinance;

- C. Not Detrimental. That the use, as approved or conditionally approved, will not be significantly detrimental to the public health, safety and welfare, and to nearby private property or improvements unless the use is a public necessity; and
- D. Transferability. The hearing examiner shall determine whether the conditional use permit shall run with the land or shall be personal. If it runs with the land and the hearing examiner finds it in the public interest, the hearing examiner may require that it be recorded in the form of a covenant with the Snohomish County auditor. The hearing examiner may also determine whether the conditional use permit may or may not be used by a subsequent user of the same property.

Conclusions Based on Findings:

1. **The proposed use is consistent with the Comprehensive Plan.** The use is compatible with residential uses because it will be conducted within an existing residential structure, will take access from a principal arterial street rather than a smaller neighborhood street, and will minimize storm water impacts. *Findings 3, 4, 7, 8, and 15.*
2. **With conditions, the proposed use in the proposed location is consistent with the purposes of the zoning ordinance and the RM zoning district, and will meet all applicable requirements of the zoning ordinance.** The use, which will be conducted within an existing residential structure, will be compatible with multiple residential uses. Adequate parking will be provided. As conditioned, compliance with the City's landscaping standards will be determined prior to building permit issuance. *Findings 2, 4, 6, 8, 9, 10, 11, and 15.*
3. **The use will not be significantly detrimental to the public health, safety, and welfare, and to nearby private property or improvements.** The Applicant proposes to provide adequate parking for owners and visitors while limiting new impervious surfaces. No exterior modifications to the building are proposed. Traffic impacts will be mitigated through payment of City traffic impact fees. The use does not pose any public safety issues. *Findings 8, 9, and 15.*
4. The permit should run with the land because the Applicant will be constructing permanent parking lot improvements to allow for office use. *Findings 8 and 13.*

DECISION

Based on the preceding Findings and Conclusions, the request for a CUP to establish an office use in the RM-2.4 zone is **GRANTED**, subject to the following conditions:

1. The Applicant shall obtain all necessary building permit approvals and inspections prior to opening the office. Approval of the landscaping plan is required prior to building permit issuance.

2. The Applicant is responsible for obtaining all local, state, and/or federal permits or approvals applicable to the proposal.
3. This application is subject to the requirements contained in the Edmonds Community Development Code (ECDC). It is the responsibility of the Applicant to ensure compliance with the applicable provisions.
4. Pursuant to ECDC 20.05010(D), the permit shall run with the land and be transferable to future users PROVIDED they demonstrate compliance with the conditions of CUP approval and obtain any other necessary permits or approvals to locate their business on site, including but not limited to a City business license.
5. This approval is based on the building area described in the application materials. Any expansion of the building that results in additional area available for office use will require a new or amended CUP.

DECIDED this 8th day of September 2010.

Toweill Rice Taylor LLC
City of Edmonds Hearing Examiners
By:


LeAnna C. Toweill

RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

REQUEST FOR RECONSIDERATION

Section 20.06.010 of the Edmonds Community Development Code (ECDC) contains the procedures for requesting reconsideration of a Hearing Examiner decision. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision. The filing deadline is 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

APPEALS

Pursuant to ECDC 20.05.020, appeals of a decision of the Hearing Examiner on a conditional use permit application are to City Council in accordance with the procedures set forth in ECDC 20.07. Only parties of record have standing to file an appeal. Appeals must be filed within 14 days of decision issuance. Filing a request for reconsideration is not a prerequisite to filing an appeal.

EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration. After the reconsideration decision has been issued, the time period for appeal shall recommence and be the same for all parties of record, regardless of whether a party filed a motion for reconsideration.

LAPSE OF APPROVAL

Section 20.05.020(C) of the ECDC states: "Time Limit. Unless the owner obtains a building permit, or if no building permit is required, substantially commences the use allowed within one year from the date of approval, the conditional use permit shall expire and be null and void, unless the owner files an application for an extension of the time before the expiration date and the city approves the application."

NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessors Office.



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MAYOR

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) NO. PLN20100042
)
) **DECLARATION OF SERVICE**
)
)
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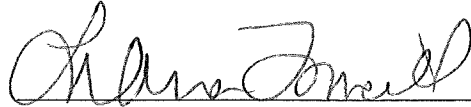
DECLARATION

I, LeAnna C. Toweill, the undersigned, do hereby declare:

1. That I am a partner in the firm of Toweill Rice Taylor LLC, which maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and make this declaration in that capacity;
2. That I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Idaho, over the age of eighteen (18), and competent to be a witness and make service herein;
3. That on September 8, 2010, I did serve a copy of the decision in case PLN20100042 upon the following individuals via U.S. first class mail:
 1. Deborah and Phillip Moran
4715 – 118th Place SE
Everett, WA 98208
 2. City of Edmonds Development Services Dept.
Attn: Diane Cunningham
121 - 5th Avenue North
Edmonds, WA 98020
 3. Edmonds City Council
121 - 5th Avenue North – 1st Floor
Edmonds, WA 98020
 4. Alvin Rutledge
7101 Lake Ballinger Way
Edmonds, WA 98026

I hereby declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct:

DATED THIS 8th day of September, 2010 at Boise, Idaho.

A handwritten signature in cursive script, appearing to read 'LeAnna Toweill', written over a horizontal line.

LeAnna C. Toweill

Toweill Rice Taylor LLC

Serving as Hearing Examiner for Edmonds, Washington